IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4008 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KRISHNA TRADING CO & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 4008 of 1999

MR SH SANJANWALLA, Sr. Counsel for
MR RS SANJANWALLA for Petitioners
MS NANDINI JOSHI AGP for Respondents No. 1-5

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/12/2001

ORAL JUDGEMENT

1. The present petition is filed by four petitioners through their Proprietors for the reliefs which are set out in paragraph 19, which is required to be reproduced

for the ready perusal :

"19(A) That Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents not to seize any truck or the gur imported by the petitioners from outside the State of Gujarat, under proper bill for the following variety of gurs, in which the petitioners are dealing regularly and also the stock of the following variety of gurs in the godown of the respective petitioners :

(1) Madras Ladu Powder;
(2) U.P. Rava Katta,
(3) Nizamabad Rava,
(4) Alkapali Rava,
(5) Maharashtra Bhilli,
(6) Katta,
(7) Bengal Pet Powder,
(8) Salem & Erode Powder,
(9) Astha Ladu (M.P. State).

(B) That the respondents be further restrained from filing FIR against the petitioners in connection with the import of gur and arresting the petitioners pursuant to such FIR, with respect to the above variety of gur mentioned in para "A" hereinabove."

2. The case of the petitioners is that the petitioners are doing business in gur; that though the petitioners are not indulging in any activity of either purchasing or selling of rotten gur, they are being unnecessarily harassed by Police Department and Excise Department. The case of the petitioners is that the petitioners are dealing in gur for which there is no prohibition under the Bombay Prohibition Act, 1949. The specific case of the petitioners is that they are dealing in business of gur which are mentioned in the paragraph 1, which are as under :

(1) Madras Ladu Powder;
(1) Madras Ladu Powder;
(2) U.P. Rava Katta,
(3) Nizamabad Rava,
(4) Alkapali Rava,
(5) Maharashtra Bhilli,
(6) Katta,
(7) Bengal Pet Powder,
(8) Salem & Erode Powder,

(9) Astha Ladu (M.P. State).

3. The grievance made before the Court is that in spite of various requests by the dealers in gur, the Department of Prohibition as well as the Police Department are not paying any heed to the Government Resolutions. It is the case of the petitioners that by those Government Resolutions, after considering the grievances of the persons like the petitioners, a clear policy has been laid down that except under the circumstances provided in those Government Resolutions, vehicles containing such gur should not be seized. Though it is contended that a representation was made, no such representation is produced along with the petition. Not only that the panchnamas, which are referred to in the petition, are also not produced.

4. Mr. S.H. Sanjanwalla, learned Advocate for the petitioners, submitted that the main grievance of the petitioners is that the Government Resolutions starting from 1978 and the last in line is of 20th January, 1995, are not followed by the Police Department, copies of which are produced at Annexure-A collectively. The first resolution referred to at Annexure-A, is dated 23rd March, 1978 and the last one is dated 20th January, 1995. The other resolution dated 11th July, 1995 is produced at Annexure-B while the resolution produced at Annexure-C is dated 3rd December, 1993. The resolution dated 20th January, 1995 is produced at Annexure-D by repeating the same as it is already produced at Annexure-A collectively.

5. It is interesting that in the petition, which is filed in the year 1999, a copy of the FIR dated 27th July, 1994 and a copy of the order passed by the Judicial Magistrate First Class, Chikhli, on 26th June, 1995, are produced. Another FIR, which is produced, is dated 1st June, 1994 and the order passed thereon dated 10th October, 1994 is produced. Next in line comes a copy of the Crime Register No. 171 of 1995 and the order passed below it. A copy of the Summary Case No.7452 of 1994 is also produced along with the order passed thereon.

6. The learned Sr. Counsel appearing for the petitioners has taken pains to produce couple of orders passed by this Court in various Miscellaneous Criminal Applications, the details of which is of some importance and, therefore, they are reproduced hereinbelow :

(i) Order dated 25th August, 1993 passed in Misc. Criminal Application No. 2785, 2786 and 2787 of

1991;

(ii) Order dated 3rd September, 1993 passed in Misc. Criminal Application No. 4490 of 1993;

(iii) Order dated 10th February, 1995 passed in Misc. Criminal Application No. 482 of 1995;

(iv) Order dated 6th September, 1995 passed in Criminal Application No. 2798 of 1995;

(v) Order dated 8th September, 1995 passed in Misc. Criminal Application No. 2798 of 1995; and,

(vi) Order dated 13th September, 1995 passed in Misc. Criminal Application No. 750 of 1995.

Thereafter, the petitioners have produced a copy of the application made before the Judicial Magistrate (First Class), Valsad dated 20th March, 1993 for obtaining remand and order passed thereon dated 20th July, 1993. The petitioners have also produced the order dated 25th August, 1993 passed in Misc. Criminal Application No. 2785, 2786 and 2787 of 1991 and order dated 3rd September, 1993 passed in Misc. Criminal Application No. 4490 of 1993, which is again a repetition. The order dated 10th February, 1995 passed in Misc. Criminal Application No.482 of 1995 is also produced, which is again repeated. The order dated 6th September, 1995 passed in Criminal Application No. 2798 of 1995 is also produced which is also repeated. The order dated 8th September, 1995 passed in Misc. Criminal Application No. 2798 of 1995 is produced for the third time. The order dated 13th September, 1995 passed in Misc. Criminal Application No. 750 of 1995 is produced, which is also repeated. The order dated 30th September, 1998 passed in Criminal Revision Application No. 502 of 1998 is also produced.

Looking to the above documents, it can be inferred that it is nothing but a calculative attempt on the part of the petitioners to mislead the Court by producing all these documents without there being any reason or rhyme or even relevance to the issue involved in the petition.

7. The gist of the prayers sought for by the petitioners is that a writ of mandamus be issued directing the authorities of Police Department as well as Excise Department that they must abide by the resolutions passed by the Government from time to time. It will not

be out of place to mention that these resolutions are issued during 1978 to 1995.

8. An affidavit in reply is filed by one Shri A.V. Bhabhor, Superintendent, Prohibition and Excise, Valsad, of which only two paragraphs are sufficient to hold that the petition has no substance and it is required to be rejected. Majority of the contentions raised in the petition are replied in paragraph 6 of the Affidavit, which is reproduced for ready perusal as under :

> "6. I say that the Traders with vested interest who are mainly hailing from South Gujarat are engaged by manufacturing of illicit country liquor by importing Rotten Gur from outside the State and by manufacturing the illicit liquor, they are doing anti-social activities. I say that the chargesheet is being filed after obtaining the laboratory analysis report with regard to the fact that whether the seized item is Rotten Gur or not. I say that on 1.4.1999, F.I.R. was lodged under section 70A of the Bombay Prohibition Act vide C.R. No. 217/99 in the Gandevi Prohibition Station against the petitioner no.1. Similarly, on 10.06.99, F.I.R. was lodged against the petitioner no. 2 and 4 in the Navsari Prohibition Station vide C.R. No. 558/99 under section 70(a), 81 of Bombay Prohibition Act......."

When this material contained in paragraph 6 of the Affidavit in reply was pointed out to the learned Sr. Counsel appearing for the petitioners, he submitted that all this material is disclosed in the petition. The learned Sr. Counsel appearing for the petitioners was requested to point out as to in which part/paragraph of the petition, this particular material is disclosed. In response to that, Mr. S.H. Sanjanwalla, learned Sr. Counsel for the petitioners, submitted that all these facts are disclosed in paragraph 9 of the petition. On reading of paragraph 9, no such facts could be found as paragraph 9 refers to an FIR of 1994, while paragraph 6 of the affidavit in reply refers to an FIR of 1999. Subsequently, Mr. S.H. Sanjanwalla submitted that he has disclosed these facts (contained in paragraph 6 of affidavit in reply) in an affidavit in rejoinder, which is filed after the affidavit in reply of the respondents. On perusal of the record, no such affidavit in rejoinder is found.

9. It is stated in the Affidavit in reply in paragraph 6 that the petitioners have suppressed all these material facts, as stated hereinabove, and hence, this petition requires to be dismissed in limine on this ground alone with heavy costs.

10. In view of the aforesaid discussion, this Court does not find any substance in the petition. The petition is dismissed with costs of Rs.20,000/- (Rs.5000/- be paid by each of the petitioners). Rule is discharged.

(Ravi R. Tripathi, J.)

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